IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

O R D E R

S.B.CRIMINAL MISC. PETITION NO. 50/2002
(Jagdish Chandra Soni Vs.State of Rajasthan & Anr.)

Date of Order : 30/08/2006

PRESENT

HON'BLE MR. JUSTICE H.R.PANWAR

Mr. Mridul Jain, for the petitioner.
Mr. Ashok Upadhyay, public prosecutor.

BY THE COURT:-

By the instant criminal misc. petition under Section 482 Cr.P.C., the petitioner has challenged the order dated 09.11.2001 passed by learned Additional Sessions Judge No.1, Udaipur (for short 'the revisional court' hereinafter) whereby the revision petition filed by the petitioner against the order dated 20.04.2001 passed by Additional Chief Judicial Magistrate, Kanod, district Udaipur (for short 'the trial court' hereinafter) taking cognizance of the offence under Section 406 IPC, was dismissed.

I have heard learned counsel for the parties. Perused the orders passed by both the courts below and record of the trial court.

On a report being Crime Report No. 113/2000 Police

Station Bhinder, Udaipur lodged by complainant non-petitioner No.2, the police investigated the matter thoroughly and filed negative final report. The trial court accepted the negative final report to the extent of offence under Section 498-A IPC, however, took the cognizance of the offence under Section 406 IPC and issued bailable warrant against the petitioner. That order came to the challenged by the petitioner before the revisional court by filing a revision. The revision petition filed by the petitioner was dismissed by order dated 9.11.2001. Hence this petition.

From the record, it appears that the petitioner and non-petitioner No.2 had been residing at Mumbai and while residing at Mumbai, the non-petitioner No.2, at her own, left the house of the petitioner and went with one Mangesh Gayakwad, on which a report was lodged by the petitioner on 2.9.99 with Police Station at Mumbai stating therein that his wife along with his minor son, left the house without informing him along with ornaments which she had. The police investigated the matter and after a period of nine months, the non-petitioner No.2 was recovered by Mumbai Police from Bangalore while she was living with Mangesh. Thereafter, the complainant non-petitioner No.2 went to her parental house and did not live with the present petitioner.

It is contended by learned counsel for the petitioner that subsequent thereto, the non-petitioner has gone with one Prakash S/o Shivlal Soni. A report in this regard was also lodged under Section 97 Cr.P.C. with police station, Fatehnagar and the Sub-Divisional Magistrate, Mavli, district Udaipur issued a warrant of production by the order dated 29.4.2003. In that proceeding, the non-petitioner No.2 was recovered from Village Jhatla, Police Station, Singoli, district Neemuch, M.P. while she was living with Prakash. She was produced before the Sub-Divisional Magistrate, Mavli where she stated that on 22.1.03 she at her own went with Prakash and expressed her desire to go to her father Kanhaiyalal R/o Bhinder. The Sub-Divisional Magistrate, finding the non-petitioner No.2 major, set her at liberty and thereafter she has started living with her father Kanhaiyalal.

In the instant case, the matter was thoroughly investigated by the police. Even the statement of Prakash was also recorded, wherein he stated that he has contacted Nata marriage with the non-petitioner and has been living with her as husband and wife with effect from 22.1.2003.

Learned counsel for the petitioner submits that there is no evidence that any articles or dowry articles were entrusted to the present petitioner. On the contrary, it was the non-petitioner No.2 who herself at her own eloped with Mangesh

from Mumbai taking away her all belongings which is evident from the report lodged by the petitioner at Mumbai Police Station.

On a careful consideration of the material on record and keeping in view the various events as noticed above, in my view, there is no evidence of either entrustment or demand of articles by the complainant non-petitioner. On the contrary, it was the non-petitioner No.2 who at her own left the matrimonial home along with her belongings and thereafter she lived for about nine months with Mangesh at Bangalore and thereafter contacted Nata marriage with Prakash. In the circumstances, therefore, in my view, both the courts below fell in error in not considering this material though available on record and therefore, the orders impugned passed by the courts below cannot be sustained and are liable to be set aside.

In the result, the petition is allowed. The order impugned dated 20.4.2001 passed by the trial court as also the order dated 9.11.2001 passed by the revisional court affirming the order of the trial court, are set aside. The proceeding against the present petitioner stands quashed.

(H.R.PANWAR),J.

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